IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

WEDNESDAY, 3RD JANUARY, 2007/13TH POUSHA, 1928
SA.No. 934 of 1992(C)

(A.S.NO.167/1990 OF THE IST ADDL. SUB COURT, THALASSERY)

(OS.92/1985 OF THE ADDL. MUNSIFF'S COURT, CANNANORE)

APPELLANT:

PAYYAN PUTHAN VEETTIL PADMANABHAN NAMBIAR,
S/O.KUNHIRAMAN NAMBIAR, TRADER, AZHIKODE AMSOM DESOM,
CANNANORE DISTRICT.

BY ADV. SRI.T.P.KELU NAMBIAR (SR.)
SRI.P.G.RAJAGOPALAN
SRI.P.C.SASIDHARAN
SRI.NARAYANIKUTTY CHETTUR

RESPONDENTS:
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1. KANNOTH PADINHARE VEETTIL KUNHIRAMAN NAMBIAR,
S/O.RAMAN NAMBIAR, RETIRED TEACHER, AZHIKODE AMSOM DESOM,
P.O.AZHIKODE, CANNANORE-9.

2. K.P.KUNHIKANNAN NAMBIAR,
S/O.KRISHNAN NAMBIAR, -DO -DO-

3. PALLIPIRIYARATH THAZHE VEETTIL SANKARAN NAIR,
S/O.JAYANTHAN BHATTATHIRIPAD OF -DO- -DO-

4. M.K.GOVINDAN NAMBIAR, S/O.RAMAN UNICHARAP KURUKKAL OF -DO-

5. K.C.KARUNAKARAN NAMBIAR, S/O.CHATHUKUTTY NAMBIAR,
MARUTHIYODAM HOUSE, P.O.CHELERI,
KANNADIPARAMBU, CANNANORE DIST.

6. P.K.VINAYAN NAIR, S/O.BALAN NAMBIAR,
AZHIKODE AMSOM DESOM, P.O. AZHIKODE,
cannanore-9.

7. MAVILA KAKKADATH GOPALAN NAMBIAR,
S/O.RAMAN UNICHARP KURUKKAL OF -DO- -DO-

8. THAYYATH PUTHAN VEETTIL LNAMBI NAMBIAR,
S/O.KANNAN NAMBIAR, OF -DO- -DO-

9. PUTHALATH APPU NAMBIAR, S/O.RAMAN NAMBIAR, -DO- -DO-

10. KIZHAKKE KANNOTH DAMODARAN NAMBIAR,
S/O.CHINDAN NAMBIAR, -DO- -DO-

11. KOTTARATHIL BHASKARAN NAMBIAR, S/O.KRISHNAN NAMBIAR,-DO- -DO-

12. VARIKKARA KANNOTH BALAN NAMBIAR, S/O.GOVINDAN NAMBIAR, -DO-

13. PAYYAN PUTHANVEETTIL KUNHIKRISHNAN NAMBIAR,
S/O.GOVINDAN NAMBIAR OF -DO- -DO-

14. MAVILA OTHAYOTH VEETTIL RAMAKRISHNAN NAMBIAR,
S/O.KUTTAPPA NAMBIAR OF -DO- -DO-

15. PATTADATHU KUNHAMBU NANBIAR, S/O.MADHAVAN NAMBIAR,
HEMALAYAM, KANNAPURAM, P.O.CHERUKUNNU, CANNANORE DIST.

16. KOTTARATHIL DAMODARAN NAMBIAR, S/O.KRISHNAN NAMBIAR,
AZHIKODE AMSOM DESOM, P.O.AZHIKODE, CANNANORE-9.

17. THAYYATH PUTHAN VEETTIL BALAN NAMBIAR, S/O.KUNHAMBU NAMBIAR,
-DO- -DO-

18. PUTHUKKUDI VELAYUDHAN NAMBIAR, S/O.RAYRU NAMBIAR OF -DO- -DO-

19. CHENEMBETH KUNHAPP NAMBIAR, S/O.PURUSHOTHAMAN, -DO- -DO-

20. MAVILA KAKKADATH MANOHARAN, S/O.KRISHNAN NAMBIAR, -D0- -DO-

21. PATTATHIL VIJAYAN NAMBIAR, S/O.KRISHNAN NAMBIAR, -DO- -DO-

22. CHENGOONI NARAYANAN NAMBIAR, S/O.KRISHNAN NAMBNIAR, -DO- -DO-

23. PAYYAN PUTHAN VEETTIL BALAN NAMBIAR, S/O.RAMAN NAMBIAR, -DO-

24. PUTHALATH MADHAVAN NAMBIAR, S/O. RAMAN NAMBIAR,
POLICE CONSTABLE, OF -DO- -DO-.

25. MAKUNI VARAYIL CHANDUKUTTY NABIAR, -DO- -DO-

(AT THE RISK OF THE APPELLANT HE IS EXEMPTED FROM THE NECESSITY OF SUBSTITUTING THE L.RS. OF THE 3RD RESPONDENT, AS PER ORDER DTD. 30/1/2003 ON MEMO DTD. 23/1/2003 VIDE C.F.NO.368/03)

R1 BY ADV. SRI.R.K.MURALEEDHARAN
SRI.R.PARTHASARATHY

R7,R14,R16 TO R22, R24 & R25 BY ADV.SRI.M.GOPIKRISHNAN

THIS SECOND APPEAL HAVING BEEN FINALLY HEARD ON 27/09/2006, THE COURT ON 3/1/2007 DELIVERED THE FOLLOWING:

P.R.RAMAN, J.

S.A.NO.934 OF 1992

Dated this the 3rd day of January, 2007

JUDGMENT

Appellant is the plaintiff in O.S.No.92/1985 on the file of the Munsiff's Court, Cannanore. Briefly stated the plaintiff's case is as follows:

Plaint A and B schedule properties belonged to Akliyath Edathil Neyyamruthu Sangham Tharwads. Plaintiff and defendants are members of the said Tharwads. The said properties were in possession of Mavila Othayoth Veettil Chandukutty Nambiar. Out of these, A schedule property on the northern side measuring 25 x 18 six feet koles was released in favour of Akliyath Edathil Neyyamruthu Sangham Tharwads. The remaining southern portion in the plaint B schedule was released by Chandukutty Nambiar in favour of

the Neyyamruthu Sangham represented by Thazheveettil Kannan Nambiar and nine others as per registered deed dated 2/9/1961. Thus, plaint A schedule property is in the possession of Neyyamruthu Sangham Tharwads and B schedule property is in the possession of Neyyamruthu Sangham. The lst defendant, who has no independent right over the property, tried to trespass into the plaint A schedule property. The plaintiff sent a registered notice to the lst defendant on 22/11/1984. In the reply the lst defendant has contended that he has obtained possession of a portion of the property orally in the year 1139 M.E. and later confirming the oral lease, the Neyyamruthu Sangham has executed a jenm deed in respect of the same in his favour on 7/5/1972. The portion of property assigned to the lst defendant is shown as plaint C schedule. The Neyyamruthu Sangham had no right to alienate or release the C schedule property

to anybody. The jenm sale deed in favour of the lst defendant is a fraudulent document. Hence, the plaintiff prayed for a declaration that the jenm sale deed in respect of plaint C schdedule property is not binding on the Neyyamruthu Sangham Tharwads or to the plaint schedule property. He has also prayed for permanent injunction against the lst defendant restraining him from trespassing into the A schedule property or causing any damage to the property. He further prayed that the lst defendant may be directed to remove any improvement made in the A schedule property beyond the B schedule and to restore the same in its original position.

2. The lst defendant on the other hand contended that both A and B schedule properties belong to Akliyath Edathil Neyyamruthu Sangham. The members of Tharwads have no right or possession over the plaint schedule properties. The Akliyath Neyyamruthu

Sangham is a group of persons from different Nayar Tharwads of Azhikode, who take holy vows and bath and conduct some special rites at the Akliyath Temple during the period from Dhanu 23 to Makaram 2 of every year in Malayalam Era. Only the Neyyamruthu Sangham has got right to lease its properties. Chandukutty Nambiar mentioned in the plaint was in possession of A and B schedule properties as the President of Dharmabhivardhini Sangham and not in his individual capacity. When the Dharmabhivardhini Sangham ceased to function, Chandukutty Nambiar released the above properties to the Neyyamruthu Sangham. Chandukutty Nambiar had no right to release any portion of the property of Neyyamruthu Sangham in favour of the members of Tharwads. After the release mentioned in the plaint, the entire property covered by the release deed has been in possession of Neyyamruthu Sangham. If any portion is released in favour of the

Tharwads, the same is contrary to law. The plaint schedule properties are not correctly identified. After the release by Chandukutty Nambiar, the Neyyamruthu Sangham has entrusted a portion of property measuring 25 x 10 six feet koles to the lst defendant on kuzhikanam right with a stipulation to pay purappad at Rs.2/- per annum. The said property was a rocky area on the southern portion of plaint A and B schedule properties. After entrustment, the lst defendant levelled the property and constructed a house and Well spending Rs.1,00,000/-. Besides, he made other improvements also. Neyyamruthu Sangham has assigned this portion later to this defendant as per assignment deed dated 7/5/1972. The lst defendant and his family are residing in the house situated in this property from 1978 onwards. The extent of the property is 20 cents. The lst defendant is paying the basic tax and building tax for the same. In addition

to this, an extent of 5 cents of property on the north was also given to the lst defendant by the Neyyamruthu Sangham as per consent letter dated 11th Medam 1146 M.E. The said property was given to put up an educational institution. The plaint schedule properties situated immediately on the west of Akliyath Temple. The plaintiff is not entitled to any relief in respect of 20 cents of property in the plaint C schedule, which exclusively belongs to the lst defendant. The right of the plaintiff or any other person, if any, over the 20 cents of property is barred by adverse possession and limitation.

3. The following issues were framed in the suit:

i) Whether the suit is maintainable?

ii) Whether the Akkliyath Neyyamruthu Sangham Tharwad members have title over the plaint schedule properties?

iii) Whether the plaint schedule properties are properly

identified?

iv) Whether the suit is bad for non joinder of necessary parties?

v) Whether the plaintiff is entitled to the declaration as prayed for?

vi) Whether the plaintiff's right, if any, is lost by adverse possession and limitation?

vii) Whether the plaintiff is entitled to the injunction as prayed for?

viii) What reliefs?

4. Issue Nos.1 and 4 were considered together. It was held that the suit was filed by the plaintiff in his individual capacity and the suit is bad for non joinder of necessary parties. On Issue No.3 the trial court found that the plaint schedule properties are not properly identified. On Issue No.2 regarding the question as to whether the Akkliyath Neyyamruthu Sangham Tharwad members have title over the plaint schedule properties, the trial court found that it cannot decide the point in the absence

of correct identification of the plaint schedule properties with reference to the documents. However, the trial court found that the plaintiff did not produce any document to show that the properties belong to the Akkliyathedathil Neyyamruthu Sangham Tharwads. In that regard the evidence of PW.1 was discussed, which did not support the case put forward by the plaintiff. However, it did not give any conclusion on this issue, in the absence of correct identification. On Issue No.6 regarding the question as to whether the plaintiff's right is lost by adverse possession and limitation, the trial court held that in the absence of correct identification of the plaint schedule properties, it is not in a position to discuss this issue. Finally, in view of the finding on Issue Nos.1 and 3, the trial court found that the plaintiff is not entitled to the declaration and injunction as prayed for and

decided Issue Nos.5 and 7 accordingly, and in the result, the suit was dismissed. Aggrieved by the judgment and decree, the appellant preferred an appeal before the Subordinate Judge's Court, Thalassery as A.S.No.167/90. The Appellate Court, after referring to the pleadings, referred to the specific contention of the appellant that the notice under Order I Rule 8 of the Code of Civil Procedure was published, and the suit was instituted in a representative capacity and supplemental defendants 2 to 28 were impleaded. So however the Appellate Court did not enter a positive finding regarding the maintainability of the suit. However, in view of the above position as referred to in paragraph 4 of the judgment, it has to be presumed that the contention of the appellant that the finding of the trial court that the suit is not maintainable in a representative capacity was wrong was accepted by the Appellatle Court, since notice under

Order I Rule 8 of the C.P.C. was published in accordance with law. The Appellate Court thereafter proceeded to consider the merits of the contention raised and found that the appellant has failed to make out sufficient grounds to declare that the sale deed dated 7/5/1992 by the Neyyamruthu Sangham in favour of the lst defendant is invalid. It was also found that the lst defendant was in exclusive possession as his own, openly to the knowledge of the plaintiff and others for more than the statutory period of 12 years. Therefore, the plaintiff's right, if any, in the property is lost by adverse possession and limitation. Since there is no recovery of possession as prayed for in the suit and in view of the factual finding that the lst defendant is in physical possession of the property even prior to 1972, the prayer for injunction was declined. There is also a finding that the Tharwad members had no right in the property

and if at all they had any such right, there is adverse possession and limitation. In that view of the matter, it was held that the plaintiff/appellant is not entitled to get a decree of injunction or any other relief. The appeal was accordingly dismissed.

5. The learned counsel for the appellant submitted that once it is found that the suit is maintainable and since the other issues were decided by the trial court, the Appellate Court ought to have remanded the case to the trial court. I cannot agree with this contention. It is true that if the suit is held to be maintainable, it is open to the Appellate Court to remand the case for fresh consideration by the trial court. But the parties have already adduced evidence on the various issues framed by the trial court and hence the Appellate Court is entitled to consider the merits of the contention raised. It must be noticed that the suit itself was of

the year 1985 and to remand the matter would only delay the final disposal of the matter. In these circumstances, it cannot be said that the Appellate Court has committed any error of law.

6. The next contention advanced on behalf of the appellant is that the Neyyamruthu Sangham had title only in respect of 9 1/2 cents of property as per release deed dated 2/9/1961 (Ext.A1). According to the plaintiff, pliant A and B schedule properties were in possession of Chandukutty Nambiar as per Registered Marupat deed and while in possession Chandukutty Nambiar released plaint A schedule property to the Akliyathedathil Neyyamruthu Sangham and only B schedule was released to the Neyyamruthu Sangham as stated earlier. It is admitted that the plaint B schedule property is in possession of Akliyathedathil Neyyamruthu Snagham; but the lst defendant has an

independent right in plaint A and B schedule properties. The Appellate Court considered the evidence in this case. It was found that Ext.A1 shows that the entire property was in the possession of one Chandukutty Nambiar as President of the Dharmabhivardhini Sangham and Ext.A1 was executed by Chandukutty Nambiar on behalf of the the said Neyyamruthu Sangham releasing 9 1/2 cents to the said Sangham. Though there is a recital in the said deed that the northern part is released in favour of the Tharwads of the Neyyamruthu Sangham and the plaintiff's claim is on the strength of the recitals contained in Ext.A1 document, no independent evidence was adduced in support of the recitals therein transferring the remaining extent of the property in favour of the Tharwad. When it is a case of the plaintiff that the Tharwad has exclusive right of the remaining 9 1/2 cents of the property, necessarily, title can be claimed only on the

basis of any registered document. No such document was produced in this case. The trial court held that "The plaintiff must be able to say as per which document, the Tharwad members got plaint schedule properties and he is bound to identify the properties as per that document. Nothing is seen done in this case." The trial court also found that the plaintiff did not produce any document which would go to show that the properties shown in the plaint belong to Akkliyathedathil Neyyamruthu Sangham Tharwads. Undisputably no such document was produced to claim title over the plaint schedule properties by the Tharwad. Further the plaintiff also could not adduce any satisfactory evidence to show that they were in possession of the properties. These are the questions of fact. On the other hand, reference was made to the evidence on record and the Appellate Court found that Neyyamruthu Sangham was managing the properties. The lst

defendant on the other hand contended that he obtained 'C' schedule property as per oral lease from the Neyyamruthu Sangham as early as in 1963 and he was in possession of the property therefrom under the Sangham as tenant on a monthly rent of Rs.2/- and he started construction of a house in this property in 1964. Thereafter, he has obtained jenm sale deed in respect of this property from the Neyyamruthu Sangham. Ext.P30 is a registration copy of the sale deed and Ext.X1 is its original. It was found that 'C' schedule property of 20 cents orally was in possession of the lst defendant on a purappad of Rs.2/- long before the execution of this document. The lst defendant is regularly paying tax for this property thereafter. Exts.B4 to B18 are the revenue receipts. The lst respondent has constructed a pucca house in this property and he is residing there with his family. The house was constructed after obtaining the

permit from the Panchayat. Ext.B3 is the receipt for having paid licence fee for the construction of the house. The lst defendant is paying building tax for this house to the Panchayat as is seen from Exts.B19 to B29. Thus, there were clear evidence to show that the lst defendant was in possession of the 'C' schedule property even prior to 1972. The plaintiff did not seek recovery of possession of the property. He failed to establish his title over the property in question. In such circumstances, the plaintiff cannot succeed and he is not entitled to the relief as prayed for. In such circumstances, it is unnecessary to consider as to whether the Neyyamruthu Sangham had obtained any valid title to the property or not and whether such Sangham could have assigned any property in favour of the lst defendant. This question will became germane, if only the plaintiff has established his title over the property. But

as already found by the court below that he failed to establish his title by adducing any satisfactory evidence.

7. In such circumstances, when it is found by the courts below that the lst defendant was in possession of the property long prior to the institution of the suit based on the materials on record and in the absence of any relief seeking recovery of possession of the property, the court below was right in declining to grant the reliefs and dismissing the suit. Though it was contended by the learned counsel for the appellant that the Sangham is governed by the provisions of the HR & CE Act, there was no issue framed regarding the same. At any rate, the plaintiff has not established his title or possession. The lst defendant is proved to have been in possession and made valuable improvements thereon as found by the court below.

8. In the circumstances, I do not find any substantial question of law arises for consideration in this appeal. The finding of the courts below does not call for any interference. Accordingly, the second appeal is dismissed.

P.R.RAMAN,
JUDGE.

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P.R.RAMAN, J.

S.A.NO.934 OF 1992

JUDGMENT

3rd January, 2007